



# 2006 GOVERNOR'S CONFERENCE



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# Land for the Taking ?

Tennessee's Response to *Kelo v. City of New London*

Presented by:

**Wilton Burnett**

**Mike Clinard**

**Jim Murphy**

**September 12, 2006**

**2:30-3:30 p.m.**





# Introduction

- Eminent Domain
  - The inherent power of the State to take private property and use it for a public purpose
- Limited by U.S. and Tennessee Constitutions





# Introduction

- Fifth Amendment to the U.S. Constitution
  - No person shall be ... deprived of ... property without due process of law, nor shall private property be taken for public use without just compensation
- Article 1, Section 8 of the TN Constitution
  - No man shall be ... disseized of his freehold ... or in any manner ... deprived of ... his property, but by the judgment of his peers or the law of the land



# Introduction

- Article I, Section 21 of the TN Constitution
  - That no man's ... property be taken, or applied to public use, without the consent of his representatives, or without just compensation being made therefore.
- Constitutional Requirements
  - Property must be taken for a *Public Use*
  - Landowner must be paid *Just Compensation*







# Introduction

- *Kelo v. City of New London*
- Homeowners challenged taking of several homes for a redevelopment project
- Connecticut statutes permitted use of eminent domain to promote economic development





# Introduction

- Supreme Court's decision
  - Public use limitation satisfied if project was for a “public purpose”
  - Promotion of economic development was a public purpose
  - Eminent domain could be utilized even though property would eventually be transferred to a private developer





# Introduction

- Firestorm of controversy ignited by *Kelo*
- TN General Assembly
  - Dozens of Bills introduced to limit use of eminent domain power
- 2006 Public Acts, Chapter 863
  - The Bill adopted as Tennessee's response to *Kelo*







# Introduction

## **Purpose of Today's Session:**

- Clarify the impact of Chapter 863 on the use of eminent domain power.

## **• Presenters:**

### **– Wilton Burnett**

- Director of Special Projects, Tennessee Department of Economic and Community Development

### **– Mike Clinard**

- Director of Right of Way, Tennessee Department of Transportation

### **– Jim Murphy**

- Attorney at Boulton, Cummings, Conners & Berry, PLC





# Impact on Industrial Parks

## Limiting Industrial Park Locations

- Chapter 863 limits where eminent domain can be used to acquire industrial park property
  - Cities: only within the city limits or the city's urban growth boundary.
  - Counties: only within county's designated planned growth area or within a city's urban growth boundary located within the county.





# Impact on Industrial Parks

## Obtaining Certificates of Public Purpose and Necessity

- Industrial Park Act
  - Cities or Counties seeking to issue G.O Bonds or capital outlay notes must first obtain a Certificates of Public Purpose and Necessity (CPPN) from Building Finance Committee
  - Issuance of CPPN indicates that the proposed industrial park project is not likely to become a burden upon the taxpayers.





# Impact on Industrial Parks

## Obtaining Certificates of Public Purpose and Necessity

- Chapter 863
  - Amends the Industrial Park Act
  - CPPN required if eminent domain will be used to acquire land, even where no borrowing involved
- Before it can issue the CPPN, the Building Finance Committee must find that Applicant was unable to:
  - Find comparable suitable alternative property; and
  - Obtain property through good faith negotiations evidenced by a purchase offer for an amount equal to or in excess of the fair market value determined by the average of at least two appraisals by independent, qualified appraisers.





# Impact on Industrial Parks

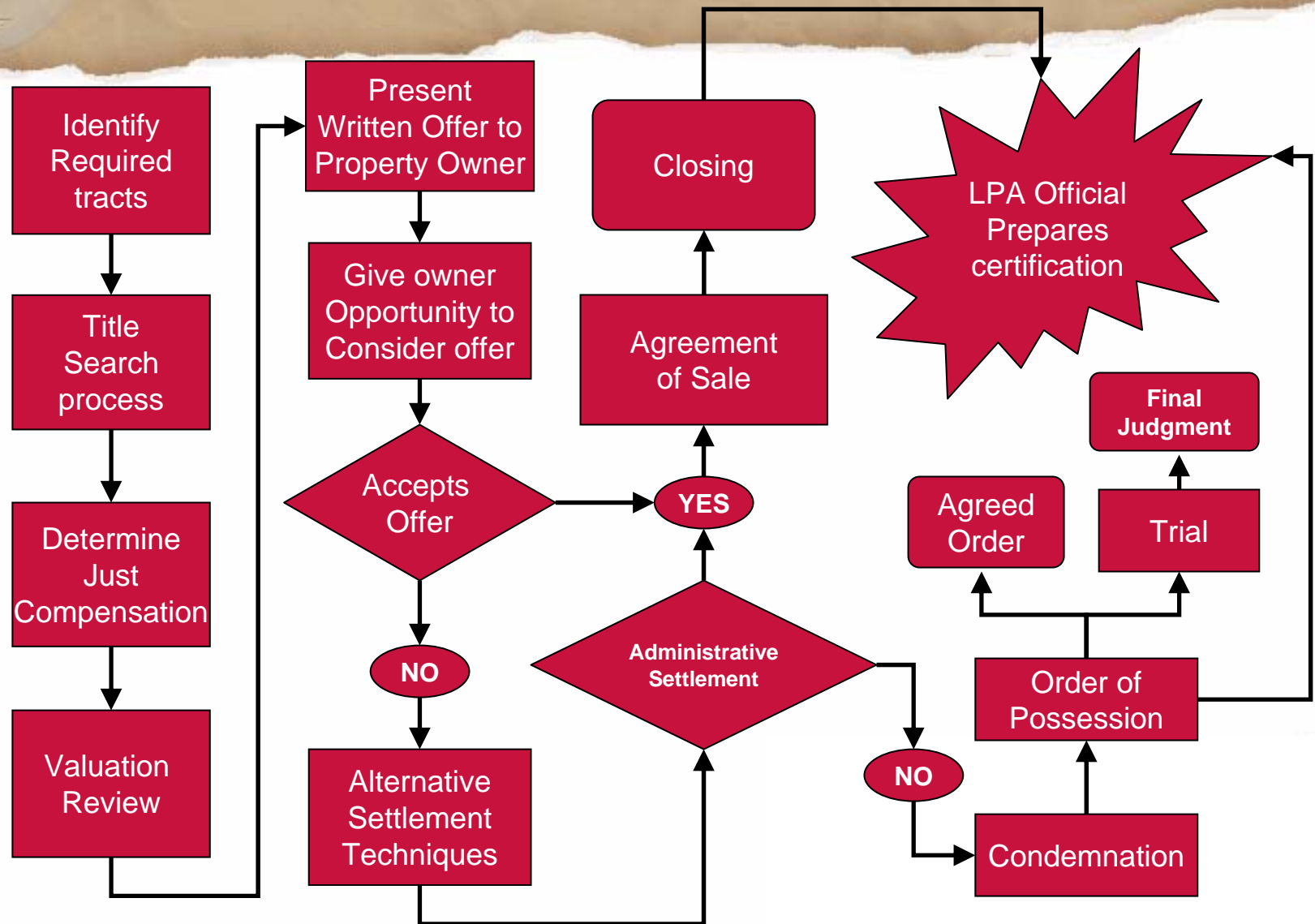
## Industrial Park Conclusions

- Eminent domain may only be used on property within certain planned use designated areas
- Certificate of Public Purpose and Necessity from the Building Finance Committee is required to use eminent domain for industrial park land even when no borrowing is involved.





# Acquisition Process







# Other Changes to Eminent Domain Laws

## Defining Public Use Narrowly

- Chapter 863 established a definition of “Public Use”
- Intended to limit use of eminent domain powers for economic development





# Other Changes to Eminent Domain Laws

## Defining Public Use Narrowly(*cont'd*)

- "Public use" does not include
  - private use or private benefit or
  - indirect public benefits resulting from private economic development and private commercial enterprise, including increased tax revenue and increased employment opportunity.





# Other Changes to Eminent Domain Laws

## **Defining Public Use Narrowly** (*cont'd*)

- **Exceptions:**

- Roads, highways, bridges, and other public transportation projects
- Land necessary for a public or private utilities, common carriers and any similar entity authorized to utilize power of eminent domain;
- Land needed by a housing authority or community development agency for an urban renewal or redevelopment plan in a blighted area;
- Private use that is merely incidental to a public use, so long as no land is condemned or taken primarily for the purpose of conveying or permitting such incidental private use; or
- Land acquired by a county, city, or town for an industrial park.





# Other Changes to Eminent Domain Laws

## Redefining “Blight”

- Redevelopment Plans – Eminent domain can be used to acquire blighted areas in order to implement a redevelopment plan.
- Chapter 863 modifies the definition of blight by removing certain blighting factors:
  - Faulty arrangement or design
  - Excessive land coverage
  - Obsolete layout





# Other Changes to Eminent Domain Laws

## Redefining “Blight”

- "Blighted areas" are now areas with buildings or improvements which, by reason of dilapidation, obsolescence, overcrowding, lack of ventilation, light and sanitary facilities, or deleterious land use, or any combination of these or other factors, are detrimental to the safety, health, morals, or welfare of the community.





# Other Changes to Eminent Domain Laws

## Redefining “Blight” (*cont’d*)

- "Welfare of the community" cannot include solely a loss of property value to surrounding properties nor does it include the need for increased tax revenues.
- Land used predominantly in the production of agriculture cannot be considered blighted







# Other Changes to Eminent Domain Laws

## **Limitation on Disposition of Land**

- Chapter 863 limits sale, lease or other transfer of land acquired by eminent domain to another public, quasi-public entity or private person or entity unless the entity transferring the land receives at least fair market value for such land.
- This requirement does not apply to the disposition of state surplus property.





# Other Changes to Eminent Domain Laws

## Modifying Quick Take Procedure

- Chapter 863 changed the quick take procedure for condemnation cases.
  - Old Law - 5 day waiting period before the condemnor can obtain possession,
  - Chapter 863 - 30 day waiting period





# Other Changes to Eminent Domain Laws

## **Adding Appraisal Requirements**

- Chapter 863 requires that a condemnor must obtain an appraisal from an appraiser
  - having the Member of the Appraisal Institute (MAI) designation or
  - licensed and qualified under Tennessee's Real Estate Appraiser's Licensing Act.





# Other Changes to Eminent Domain Laws

## Creating Floor for Valuation

- If the entire tax parcel is condemned, Chapter 863 sets the floor for the fair market value as the last valuation used by the assessor of property prior to the date of taking less any decrease in value for any changes in such parcel occurring since the valuation was made, such as the removal or destruction of a building, flooding, waste, or removal of trees. Such valuation by the assessor can now be introduced at trial and admitted into evidence.





# Other Changes to Eminent Domain Laws

## Recovering Attorneys Fees

- Landowner can now recover including reasonable attorney, appraisal, and engineering fees if the condemnor
  - Abandons the condemnation, or
  - The court finds that the condemnor does not have the right to condemn the property.





# Other Changes to Eminent Domain Laws

## Removing Eminent Domain Power

- Tennessee Duck River Development Agency
- Chickasaw Basin Authority
- Sequatchie Valley Planning and Development Agency
- Tennessee River Four-County Port Authority
- Public Ferries
- County Fishing Lakes
- Watershed Districts
- Public Grist Mills
- Incline Railroad Companies







# Land for the Taking

Tennessee's Responded to *Kelo v. City of New London*

## Questions & Answers

